

## Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY WELLINGTON PRIORITY

INFO AMEMBASSY CANBERRA

SECDEF

CNO

CINCPAC

CINCPACFLT MAKALAPA

AMEMBASSY SUVA BY POUCH

C O N F I D E N T I A L STATE 117950

CINCPAC ALSO FOR POLAD

E.O. 11652:GDS

TAGS: MNUC, MARR, NZ

SUBJECT:NUCLEAR POWERED WARSHIPS (NPW) VISITS TO NEW  
ZEALAND

REF: (A) WELLINGTON 1175 (DTG 260508Z MAR 76,  
(B) WELLINGTON 1176 (DTG 260509Z MAR 76), (C) WELLINGTON  
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251902Z SEP 75), (E) WELLINGTON 1423 (DTG 142257Z APR 76),  
(F) SECSTATE 079246 (DTG 020653Z APR 76)  
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, SUMMARY. CABLE PROVIDES GUIDANCE TO DEAL WITH GONZ  
1-SUMMARY. CABLE PROVIDES GUIDANCE TO DEAL WITH GONZ  
LEGAL AND TECHNICAL QUESTIONS CONCERNING NPW CONTAINED IN  
REFTELS A, B AND C. END SUMMARY.

2. BELOW WE HAVE PROVIDED GUIDANCE FOR RESPONSE TO THE LATEST GONZ QUESTIONS (REFTEL A AND B) CONCERNING DETAILED LEGAL LIABILITY ASPECTS OF NPW VISITS AND TO TECHNICAL QUESTIONS CONTAINED IN REFTEL C. U.S. IS NOT PREPARED TO GIVE FURTHER FORMAL ASSURANCES GOING BEYOND THOSE ALREADY GIVEN TO GONZ. IN THE CASE OF NPWS WE HAVE PROVIDED THE GONZ, THROUGH OUR UNILATERAL ASSURANCES, WITH THE SAME CONCRETE BASIS THAT MANY OTHER COUNTRIES HAVE FOUND ADEQUATE WITHOUT FURTHER ELABORATION TO SUPPORT THEIR POLITICAL

DECISION TO PERMIT ENTRY. WE OBVIOUSLY CANNOT PROVIDE UNIQUE ASSURANCES TO NEW ZEALAND WITHOUT JEOPARDIZING OUR COMMON ARRANGEMENT WITH THOSE GOVERNMENTS WHICH ACCEPT OUR NPW. FYI. AS INDICATED REFTEL D, DOD WILL ISSUE AN UNCLASSIFIED DIRECTIVE TO THE NAVY CONTAINING IMPLEMENTING INSTRUCTIONS WHEN THE EXECUTIVE ORDER FOR PL 93-513 IS SIGNED. HOWEVER, THIS IS STILL SOME TIME AWAY. EVEN THEN IT WILL NOT ANSWER EXPLICITLY THE MANY DETAILED LEGAL QUESTIONS WHICH COULD BE ASKED REGARDING THE MANNER IN WHICH THE U.S. MIGHT ULTIMATELY HANDLE CLAIMS IN THE EXTREMELY UNLIKELY EVENT OF A NUCLEAR REACTOR ACCIDENT. END FYI. WHILE DESIRE ON PART OF GONZ ADMINISTRATION TO PIN DOWN LEGAL DETAILS IS UNDERSTANDABLE, IT IS NOT POSSIBLE TO CREATE A COMPREHENSIVE IMPLEMENTING REGIME FOR PL 93-513 WHICH WOULD ANSWER EVERY POSSIBLE LEGAL OR ADMINISTRATIVE ASPECT OF HANDLING POTENTIAL CLAIMS. IN OUR VIEW ALL POTENTIAL CONTINGENCIES CANNOT BE RESOLVED IN ADVANCE OF OUR EVER HAVING TO DEAL WITH SUCH CLAIMS. AN EFFORT TO DEVELOP ALL DETAILS OF HOW CLAIMS MIGHT BE HANDLED SEEMS PARTICULARLY UNNECESSARY AS NO POWER REACTOR NUCLEAR ACCIDENT HAS EVER OCCURRED. IN THE CASE OF THE MORE TECHNICALLY ORIENTED QUESTIONS OF REFTEL C, THERE IS LITTLE THAT CAN BE PROVIDED WITHOUT EITHER COMPROMISING THE TRADITIONAL CONCEPT OF SOVEREIGN CONTROL OVER WARSHIP OPERATION OR REVEALING CLASSIFIED CONFIDENTIAL

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NAVAL NUCLEAR PROPULSION INFORMATION, WHICH IS PROHIBITED BY U.S. LAW.

3. WE CANNOT OVEREMPHASIZE TO GONZ THE IMPORTANCE WE ATTACH TO MAINTAINING THE STRAIGHTFORWARD UNILATERAL APPROACH WE FOLLOW FOR NPW PORT ENTRY. UNTIL DECEMBER 1974 THAT BASIS CONSISTED SOLELY OF THE ASSURANCES CONTAINED IN THE U.S. STANDARD STATEMENT WHERE THE SUBJECT OF LIABILITY AND INDEMNITY WAS DEALT WITH ONLY IN PARA 3 OF THE STATEMENT. BECAUSE OF CONCERNS EXPRESSED BY SEVERAL COUNTRIES OVER THE QUESTION OF ABSOLUTE LIABILITY PL 93-513 WAS ENACTED. THIS LAW REPRESENTS A UNILATERAL POLICY DECLARATION THAT THE U.S. WILL APPLY AN ABSOLUTE LIABILITY STANDARD TO CLAIMS ARISING FROM INCIDENTS

INVOLVING THE NUCLEAR REACTOR OF A U.S. WARSHIP. IN EFFECT PL 93-513 IS AN ASSURANCE OVER AND ABOVE THOSE CONTAINED IN THE STANDARD STATEMENT, AND ONE THAT IS BACKED BY THE FULL WEIGHT OF THE USG. WE SEEK, AS WE ALWAYS HAVE, NPW PORT ENTRY ON THE BASIS OF THESE ASSURANCES. WE DO NOT NEGOTIATE THESE ASSURANCES AS TO DO SO COULD SUBJECT OUR NPW PORT ENTRY TO A MELANGE OF ARRANGEMENTS THAT WOULD BE HIGHLY DETRIMENTAL TO ESSENTIAL U.S. FLEET FLEXIBILITY. REQUESTS BY GONZ FOR FURTHER

EXPLANATIONS AND ASSURANCES REGARDING PL 93-513 AND OTHER TECHNICAL ASPECTS OF U.S. NAVAL NUCLEAR PROPULSION PLANTS ARE NO DIFFERENT FROM REQUESTS WE HAVE RECEIVED FROM OTHER COUNTRIES TO FURTHER EXPAND ON SPECIFIC ASSURANCES CONTAINED IN THE STANDARD STATEMENT. THESE WE HAVE NOT GIVEN SO AS NOT TO UNDERMINE THE WORLD-WIDE ACCEPTANCE OF THE STANDARD STATEMENT AS WRITTEN. THE SAME CONSIDERATION APPLIES TO GIVING ADDITIONAL FORMAL EXPLANATION REGARDING IMPLEMENTATION OF PL 93-513 OR FURTHER TECHNICAL DETAILS ON THE PROPULSION PLANTS.

4. AS INDICATED IN REFTTEL E, POLITICAL DECISION BY PRIME MINISTER TO PERMIT NPW VISITS APPEARS FIRM. WHILE WE ARE PREPARED TO GIVE INFORMAL ORAL RESPONSES TO THE LATEST SERIES OF QUESTIONS, WE NEED TO CLEARLY CONVEY THAT WE HAVE ALREADY GIVEN THE GONZ ALL THE FORMAL ASSURANCES WE CAN.

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5. AS SUGGESTED PARA 4 OF REFTTEL A, WE BELIEVE BEST APPROACH IS FOR CHARGE TO MAKE DEMARCHE TO PRIME MINISTER (IF POSSIBLE) OR FOREIGN MINISTER COVERING THE FOLLOWING POINTS:

A. U.S. IS MOST GRATEFUL FOR PRIME MINISTER'S DECISION TO ACCEPT U.S. NUCLEAR POWERED WARSHIP VISITS. HOWEVER, AS WE HAVE INDICATED ON PREVIOUS OCCASIONS U.S. HAS ALREADY BEEN AS FORTHCOMING AS WE CAN BE IN GIVING GONZ THE SAME COMPREHENSIVE UNILATERAL ASSURANCES (STANDARD STATEMENT AND PL 93-513) GIVEN TO OTHER COUNTRIES.

B. THE U.S. CANNOT NEGOTIATE ADDITIONAL ASPECTS OF OUR ASSURANCES WITH EACH INDIVIDUAL COUNTRY FOR REASONS STATED IN PARA 2 AND 3 ABOVE.

C. THE BASIS FOR NPW PORT ENTRY WE PROPOSE IS THE SAME WHICH THE USG ACCEPTS FOR FOREIGN ALLIED NPW VISITS TO THE U.S.

D. THE U.S. BELIEVES ITS ASSURANCES PROVIDE A SOUND AND ADEQUATE BASIS FOR ANY COUNTRY, PARTICULARLY A CLOSE DEFENSE ALLY SUCH AS NEW ZEALAND WHOSE SECURITY INTERESTS

ARE CLOSELY TIED TO THE U.S., TO WELCOME OUR NPW INTO THEIR PORTS.

E. WE ARE PREPARED TO GIVE INFORMAL ORAL RESPONSES TO LATEST QUESTIONS IN THE INTEREST OF SHARING WITH GONZ OUR PRESENT THINKING, PARTICULARLY ON CLAIMS MATTER. DUE TO

RESTRICTIONS OF U.S. LAW ANSWERS TO TECHNICALLY ORIENTED QUESTIONS CANNOT BE GIVEN AS WE INDICATED WOULD BE THE CASE IN PARA 2C OF THE STANDARD STATEMENT. NONETHELESS, WE HAVE TRIED TO BE AS FORTHCOMING AS WE CAN BE WITHIN THE CONSTRAINTS WE FACE. U.S. DOES NOT INTEND TO FORM-LIZE THESE ANSWERS BY EXCHANGE OF NOTES OR IN ANY OTHER WAY IN ORDER THAT OUR STANDARD ASSURANCES GIVEN ALL COUNTRIES REMAIN THE SOLE BASIS FOR PORT ENTRY.

F. WE HOPE THAT WITH THESE RESPONSES THE PRIME MINISTER  
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WILL DECIDE FURTHER GONZ QUESTIONING ON PL 93-513 IMPLEMENTATION OR TECHNICAL/OPERATIONAL ASPECTS OF U.S. NPWS IS UNNECESSARY. WE ARE CONCERNED THAT A CONTINUING EFFORT TO OBTAIN INFORMATION WE CANNOT PROVIDE COULD UNDERMINE PRIME MINISTER'S DECISION TO ALLOW NPW VISITS IN THE CONTEXT OF THE LARGER ANZUS DEFENSE INTERESTS BEING SERVED.

6. IN SEPARATE APPROACH TO OFFICIAL LEVEL OF MFA, PRE-FERABLY PRIOR TO CHARGES DEMARCHE, EMBASSY SHOULD DRAW ON FOLLOWING IN MAKING ORAL RESPONSE TO LEGAL QUESTIONS IN ORDER PRESENTED IN REFTEL A:

A. QUESTION. AS A PRELIMINARY QUESTION, WE WOULD BE INTERESTED TO LEARN WHETHER THE PRESIDENT OF THE UNITED STATES HAS PROMULGATED ANY TERMS AND CONDITIONS FOR SETTLING CLAIMS FOR NUCLEAR DAMAGE INVOLVING ITS NUCLEAR POWERED WARSHIPS, AS THE JOINT RESOLUTION AUTHORIZED HIM TO DO?

ANSWER. NO.

B. QUESTION. WHAT KIND OF CLAIMS SETTLEMENT MACHINERY DOES THE UNITED STATES GOVERNMENT ENVISION WILL BE SET UP UNDER THIS JOINT RESOLUTION?

ANSWER. IT IS ENVISIONED THAT A CLAIMANT COULD EITHER FILE AN ADMINISTRATIVE CLAIM WITH THE UNITED STATES GOVERNMENT OR COULD SUE THE UNITED STATES GOVERNMENT IN A UNITED STATES DISTRICT COURT. OF COURSE, THE NEW ZEALAND GOVERNMENT COULD ALWAYS PRESENT A CLAIM ON BEHALF OF ONE OF ITS CITIZENS TO THE UNITED STATES GOVERNMENT THROUGH DIPLOMATIC -HANNELS.

C. QUESTION. THE JOINT RESOLUTION ITSELF SEEMS TO BE SILENT AS TO THE STANDARD OF PROOF REQUIRED BEFORE THE UNITED STATES GOVERNMENT WOULD SETTLE SUCH A NUCLEAR DAMAGE CLAIM. THE INTENTION OF THE UNITED STATES GOVERNMENT TO SETTLE NUCLEAR DAMAGE CLAIMS ON AN ABSOLUTE

LIABILITY BASIS HAS NOT BEEN WRITTEN INTO THE RESOLUTION.  
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IN EFFECT, THE RESOLUTION APPEARS TO BE ONLY THE BASIS FOR THE GUARANTEE OF ABSOLUTE LIABILITY, NOT THE GUARANTEE ITSELF.

ANSWER. PL 93-513 IS A UNILATERAL DECLARATION OF INTENT BY THE UNITED STATES GOVERNMENT, AMPLIFYING SECTION 3 OF THE STANDARD STATEMENT. PL 93-513 STATES:

"...THAT IT IS THE POLICY OF THE UNITED STATES THAT IT WILL PAY CLAIMS OR JUDGMENTS FOR BODILY INJURY, DEATH, OR DAMAGE TO OR LOSS OF REAL OR PERSONAL PROPERTY PROVEN TO HAVE RESULTED FROM A NUCLEAR INCIDENT INVOLVING A NUCLEAR REACTOR OF A UNITED STATES WARSHIP."

BY NOT REQUIRING THAT FAULT OR NEGLIGENCE BE PROVED, BUT AFFIRMING PAYMENT UPON PROOF OF CAUSATION ALONE A STANDARD OF ABSOLUTE LIABILITY IS ESTABLISHED. THE LEGISLATIVE HISTORY MAKES CLEAR THAT THIS IS THE CORRECT INTERPRETATION. THE REPORT BY THE JOINT COMMITTEE ON ATOMIC ENERGY WHICH ACCOMPANIES PL 93-513, AFTER REVIEWING THE OTHER U.S. LAWS SETTING A STANDARD OF ABSOLUTE LIABILITY FOR NUCLEAR FACILITIES, STATES:

"THE INTENT OF THE RESOLUTION IS TO ENABLE THE U.S. TO GIVE A STRAIGHTFORWARD UNQUALIFIED ASSURANCE THAT ANY NUCLEAR DAMAGE CLAIMS INVOLVING THE REACTOR OF A NUCLEAR POWERED WARSHIP WOULD BE HANDLED ON AN ABSOLUTE LIABILITY BASIS REGARDLESS OF WHETHER A FOREIGN GOVERNMENT HAS ENACTED LEGISLATION TO THAT EFFECT."

NEGLECT ON THE PART OF THE AGENTS OF THE UNITED STATES GOVERNMENT WOULD NOT NEED TO BE PROVED. ALL THAT WOULD BE NECESSARY WOULD BE FOR THE CLAIMANT TO SHOW:

- (1) THAT AN INCIDENT INVOLVING A NUCLEAR REACTOR OF A U.S. NUCLEAR POWERED WARSHIP OCCURRED, AND;
- (2) THAT THE DAMAGES CLAIMED RESULTED FROM THAT INCIDENT.

(D) QUESTION. WHAT TIME LIMIT WOULD BE SPECIFIED BY THE USG WITHIN WHICH A CLAIM OF NUCLEAR DAMAGE WOULD NEED  
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TO BE SUBMITTED?

ANSWER. THE U.S. WOULD EXPECT TO ADOPT A LIMIT FOR NUCLEAR DAMAGE CLAIMS WHICH WOULD BE LONGER THAN THE TWO YEAR PERIOD ORDINARILY APPLICABLE TO NON-NUCLEAR CLAIMS.

E. QUESTION. GONZ WOULD BE INTERESTED TO LEARN WHETHER THE USG ENVISAGES SETTING A LIMITATION ON THE AMOUNT OF LIABILITY INCURRED UNDER THE RESOLUTION, AND, IF SO, WHAT THAT AMOUNT WOULD BE?

ANSWER. NO LIMITATION ON THE AMOUNT OF LIABILITY INCURRED UNDER THE RESOLUTION IS ENVISAGED. PL 93-513 CONTAINS NO PRESCRIBED LIMIT BECAUSE, AS STATED IN THE JOINT COMMITTEE ON ATOMIC ENERGY REPORT ON THE BILL, "...THE U.S. GOVERNMENT HAS STATED THAT IT WILL TAKE CARE OF WHATEVER DAMAGE ITS SHIPS CAUSE."

7. WITH REGARD TO THE LEGAL QUESTIONS PRESENTED IN REFTTEL B, AMEMBASSY SHOULD PROVIDE THE FOLLOWING RESPONSES ORALLY:

A. QUESTION. DOES THIS DOCUMENT (PL 93-513) HAVE THE FORCE OF LAW IN NEW ZEALAND?

ANSWER. NO. HOWEVER, U.S. COURTS OR ADMINISTRATIVE AGENCIES WOULD DRAW ON PL 93-513 IN DEALING WITH CLAIMS ARISING IN NEW ZEALAND AS A RESULT OF A US NPW REACTOR INCIDENT.

B. QUESTION. IF THE DOCUMENT DOES HAVE THE FORCE OF LAW IN NEW ZEALAND, WHO MAY INVOKE IT, IN WHAT COURT OR COURTS, AND IS IT ACTIONABLE AT THE SUIT OF

- (1) THE NEW ZEALAND GOVERNMENT;
- (2) ANY INDIVIDUAL CLAIMING TO BE HARMED BY A NUCLEAR MISHAP;
- (3) THE NEW ZEALAND GOVERNMENT ON BEHALF OF SUCH AN INDIVIDUAL?

ANSWER. AN ACTION MAY BE BROUGHT BY AN INDIVIDUAL IN A CONFIDENTIAL

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U.S. DISTRICT COURT OR A CLAIM MAY BE PRESENTED TO A DESIGNATED U.S. GOVERNMENT AGENCY. THE NEW ZEALAND GOVERNMENT MAY PRESENT A CLAIM OF ITS OWN OR ON BEHALF OF ITS NATIONALS.

C. QUESTION. IS PUBLIC LAW 93-513 BINDING ON THE U.S.

GOVERNMENT AND, IF SO, MUST ANY SUCH LIABILITY BE SUPPORTED BY THE FINDING OF A COURT OR OTHER TRIBUNAL?

ANSWER. PL 93-513 IS A UNILATERAL DECLARATION OF INTENT ON THE PART OF THE EXECUTIVE AND LEGISLATIVE BRANCHES OF UNITED STATES GOVERNMENT. THE STANDARD OF ABSOLUTE LIABILITY SET FORTH IN THE PUBLIC LAW WOULD BE BINDING ON

THE UNITED STATES GOVERNMENT. LIABILITY NEED NOT NECESSARILY BE SUPPORTED BY THE FINDING OF A COURT OR OTHER TRIBUNAL. LIABILITY CAN BE ESTABLISHED THROUGH ADMINISTRATIVE CLAIMS PROCEDURES OR THROUGH NORMAL DIPLOMATIC CHANNELS. IN ANY EVENT, A STANDARD OF ABSOLUTE LIABILITY WOULD BE USED FOR ASSESSING FAULT.

D. QUESTION. IN UNDERTAKING TO BE RESPONSIBLE FOR ANY DAMAGE RESULTING FROM SUCH A MISHAP, DOES THIS EXTEND TO PHYSICAL INJURY TO AN INDIVIDUAL AND, IF SO, IS THERE ANY TIME LIMIT WITHIN WHICH SUCH INJURY MUST MANIFEST ITSELF TO BE COVERED AND DOES IT ALSO COVER GENETIC OR OTHER INJURIES TO CHILDREN NOT YET BORN AT THE TIME OF THE HAPPENING OF THE MISHAP?

ANSWER: AS STATED IN PL 93-513, THE UNITED STATES WILL PAY CLAIMS OR JUDGMENTS FOR BODILY INJURY. THIS WOULD UNDOUBTEDLY ALSO COVER GENETIC OR OTHER INJURY TO CHILDREN NOT YET BORN AT THE TIME OF THE MISHAP IF IT COULD BE PROVED THAT SUCH INJURY RESULTED FROM A NUCLEAR INCIDENT INVOLVING THE NUCLEAR REACTOR OF THE U.S. WARSHIP. AS TO THE TIME LIMIT FOR THE SUBMISSION OF CLAIMS THE U.S. WOULD EXPECT TO ADOPT A LIMIT FOR NUCLEAR DAMAGE CLAIMS WHICH WOULD BE LONGER THAN THAT ORDINARILY APPLICABLE TO NON-NUCLEAR CLAIMS.

E. QUESTION. WHO IS RESPONSIBLE FOR ASSESSING THE CONFIDENTIAL

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AMOUNTS OF SUCH DAMAGE AND IS ANY SUCH ASSESSMENT OPEN TO APPEAL OR REVIEW?

ANSWER. AS STATED IN THE ANSWER TO AN EARLIER QUESTION, CLAIMS MAY BE FILED EITHER ADMINISTRATIVELY OR JUDICIALLY AND THE ADMINISTRATIVE OR JUDICIAL PROCEDURES OF THE UNITED STATES WOULD APPLY. NORMAL DIPLOMATIC USAGE WOULD COVER CLAIMS PRESENTED DIPLOMATICALLY.

F. QUESTION. DOES ANY LIABILITY RESULTING FROM THE RESOLUTION OF CONGRESS EXTEND TO AND INCLUDE ALL SUMS WHICH MAY BE PAYABLE UNDER THE ACCIDENT COMPENSATION ACT OF 1972 AND WILL THE ACCIDENT COMPENSATION COMMISSION BE REIMBURSED FOR ANY PAYMENTS MADE BY IT?

ANSWER. WE ARE NOT FAMILIAR WITH THE ACCIDENT COMPENSATION ACT OF 1972 OR THE NEW ZEALAND COMPENSATION COMMISSION WHICH IT APPARENTLY ESTABLISHES. HOWEVER, IT IS ASSUMED THAT THE NEW ZEALAND GOVERNMENT COULD FILE AN ADMINISTRATIVE CLAIM WITH THE U.S. GOVERNMENT FOR DAMAGES AWARDED BY THE COMMISSION OR PURSUE THE CLAIM DIPLOMATICALLY.

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G. QUESTION. ARE THE ANSWERS TO ANY OF THE ABOVE QUESTIONS AFFECTED BY WHETHER THE MISHAP OCCURRED IN OR ABOVE NEW ZEALAND SOIL OR ANY SPECIFIC DISTANCE FROM IT AND, IF SO, HOW?

ANSWER: THE COMPREHENSIVE STATEMENT OF U.S. POLICY REGARDING APPLICATION OF THE STANDARD OF ABSOLUTE LIABILITY TO U.S. NPW REACTOR INCIDENT DOES NOT CONTAIN ANY GEOGRAPHICAL LIMITS.

H. QUESTION. IS IT CORRECT THAT NO INSURANCE COMPANY IS WILLING TO PROVIDE COVER FOR ANY LOSS HOWEVER ARISING DUE TO NUCLEAR MISHAPS?

ANSWER. THE UNITED STATES IS A SELF INSURER OF ITS LIABILITY AND HAS NEVER ATTEMPTED TO ACQUIRE COMMERCIAL LIABILITY INSURANCE TO COVER ITS WARSHIPS OR OTHER PUBLIC VESSELS.  
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8. WITH REGARD TO REFTTEL C EMBASSY SHOULD PROVIDE FOLLOWING RESPONSES ORALLY:

A. QUESTION. DOES THE LAST SENTENCE OF PARAGRAPH 1 OF THE STATEMENT MEAN THAT:

(1) THE UNITED STATES GOVERNMENT WILL CERTIFY THAT THE VESSEL'S NUCLEAR PLANT, ITS ASSOCIATED EQUIPMENT AND ALL SAFETY AND PROTECTIVE DEVICES WERE IN FULL WORKING ORDER AND OPERATING WITHOUT ABNORMALITY?

(2) THE COMMANDING OFFICER WILL BE AUTHORIZED TO SIGNAL THE APPROPRIATE NAVAL AUTHORITY TO THIS EFFECT, WITHIN TWELVE HOURS OF THE VESSELS PROPOSED ENTRY INTO A NEW ZEALAND PORT?

ANSWER. THE U.S. DOES NOT RELEASE INFORMATION ON THE OPERATING PRACTICES FOLLOWED ON BOARD NUCLEAR POWERED WARSHIPS AND THUS THE COMMANDING OFFICERS WOULD NOT BE ABLE TO PROVIDE A REPORT ON THAT STATUS OF EQUIPMENT. HOWEVER, AS INDICATED IN THE LAST SENTENCE OF PARAGRAPH 1 OF THE STANDARD STATEMENT, U.S. NPW FOLLOW THE SAME STRINGENT SAFETY PROCEDURES AND PRECAUTIONS REGARDLESS OF WHETHER THE PORT VISITED BY THE SHIP IS FOREIGN OR



DOMESTIC.

B. QUESTION. DO PARAGRAPH 1 AND 2D MEAN THAT THE COMMANDING OFFICER WILL COMPLY WITH ALL DIRECTIONS OF THE PORT NAVAL AUTHORITIES REGARDING THE MOVEMENT OF THE VESSEL WITHIN THE HARBOUR? (THE COMMANDING OFFICER WOULD,

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OF COURSE, BE CONSULTED PREVIOUSLY, PARTICULARLY IN THE EVENT OF AN ACCIDENT/INCIDENT.)

ANSWER. THE COMMANDING OFFICER OF A SHIP IS ULTIMATELY RESPONSIBLE FOR ALL MOVEMENTS OF HIS SHIP IN THE INTEREST OF SAFETY OF THE VESSEL. THE COMMANDING OFFICER OF A NPW WOULD OF COURSE COOPERATE WITH LOCAL AUTHORITIES IN SHIP  
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MOVEMENTS WITHIN HARBOURS IN THE SAME MANNER AS IS THE CASE FOR VISITS BY CONVENTIONAL POWERED WARSHIPS.

C. QUESTION. DOES THE TERM "ACCIDENT" IN PARAGRAPH 2C INCLUDE:

(1) ACCIDENT, DEFINED AS: 'AN UNEXPECTED EVENT INVOLVING A NUCLEAR REACTOR PLANT, WHICH RESULTS IN A RADIOLOGICAL HAZARD EXTERNAL TO THE REACTOR PLANT'?

(2) INCIDENT, DEFINED AS 'AN UNEXPECTED EVENT INVOLVING A NUCLEAR REACTOR PLANT, WHICH COULD LEAD TO A REACTOR ACCIDENT UNLESS CONTROLLED'?

(3) AN UNEXPECTED EVENT INVOLVING A NUCLEAR REACTOR RESULTING IN A POSSIBLE PUBLIC HAZARD, OR ANY CIRCUMSTANCES KNOWN WHICH INCREASE THE LIKELIHOOD OF SUCH AN EVENT?

ANSWER. THE U.S. DOES NOT FURTHER DEFINE THE TERM "ACCIDENT" AS USED IN THE STANDARD STATEMENT.

D. QUESTION. IF THE ANSWER TO ANY OF THE THREE QUESTIONS ABOVE IS IN THE NEGATIVE: (1) HOW IS ACCIDENT DEFINED? (2)WHICH OF (C) (1) - (3) ABOVE WOULD THE UNITED STATES AUTHORITIES ACCEPT AS A DEFINITION OF 'ACCIDENT'?

ANSWER. SEE ANSWER TO C ABOVE.

E. QUESTION. WOULD THE UNITED STATES AUTHORITIES AGREE TO THE FOLLOWING CONDITION: 'OPENING THE NUCLEAR REACTOR CONTAINMENT STRUCTURE, DEFUELING, THE RELEASE OF ANY AIRBORNE OR SOLID OR LIQUID RADIOACTIVE MATERIAL, REFUELING, REPAIRS OR MAINTENANCE ON THE VESSEL'S REACTOR AND

PRIMARY NUCLEAR SYSTEM OR EQUIPMENT SHALL NOT BE CARRIED OUT IN A NEW ZEALAND PORT OR WITHIN NEW ZEALAND TERRITORIAL WATERS, EXCEPT WITH THE EXPRESS PERMISSION OF A PERSON AUTHORIZED BY THE NEW ZEALAND GOVERNMENT.'

ANSWER. THE U.S. CANNOT AGREE TO CONDITIONS WHICH AFFECT THE INTERNAL OPERATIONS OF ITS WARSHIPS. IT SHOULD BE CONFIDENTIAL

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NOTED, HOWEVER, THAT U.S. NPW WOULD ONLY BE MAKING ROUTINE VISITS TO NEW ZEALAND PORTS WHERE EVOLUTIONS SUCH AS DEFUELING ARE NEITHER CONTEMPLATED NOR POSSIBLE TO EXECUTE IN THE ABSENCE OF U.S. INDUSTRIAL SUPPORT. AS TO RELEASE OF ANY AIRBORNE, SOLID OR LIQUID RADIOACTIVE MATERIAL PARA 2A OF THE STANDARD STATEMENT GUARANTEES THAT NO EFFLUENT OR OTHER WASTE WILL BE DISCHARGED FROM AN NPW WHICH WOULD CAUSE A MEASURABLE INCREASE IN THE GENERAL BACKGROUND RADIOACTIVITY OF THE ENVIRONMENT.

F. QUESTION. CONFIRMATION THAT PARAGRAPHS 1, 2B AND 2D MEAN THAT:

(1) THE VESSEL WILL CARRY SUFFICIENT MONITORING AND SAFETY EQUIPMENT FOR USE (IN EMERGENCY SITUATION) ON THE VESSEL AND ON SHORE IN THE VICINITY OF THE VESSEL.

(2) THE VESSEL WILL AT ALL TIMES HAVE SUFFICIENT OFFICERS AND CREW ON BOARD COMPETENT TO BE ABLE TO TAKE THE SHIP TO SEA AT SHORT NOTICE, TO MAINTAIN A FIRE WATCH AT ALL TIMES, TO OPERATE FIRE-FIGHTING EQUIPMENT, AND TO MAN THE REACTOR CONTROL ROOM.

ANSWER. (1) ALL U.S. NPW CARRY AN ALLOWANCE OF EQUIPMENT SUITABLE FOR MONITORING RADIATION THAT MIGHT BE ENCOUNTERED IN NORMAL OPERATION AS WELL AS ACCIDENTAL SITUATIONS. THE SHIPS HAVE TECHNICIANS AND OFFICERS TRAINED IN ALL ASPECTS OF SHIP OPERATIONS AS WELL AS IN MONITORING OF RADIATION AND EMERGENCY SITUATIONS. IF THERE EVER WERE AN ACCIDENTAL RELEASE THESE PERSONNEL WOULD FOLLOW THE APPROPRIATE CASUALTY PROCEDURE TO WHICH THEY ARE TRAINED AND WOULD RENDER ASSISTANCE LOCALLY AS REQUIRED.

(2) U.S. WARSHIPS MAKING ROUTINE VISITS TO FOREIGN PORTS ALWAYS MAINTAIN ADEQUATE CREW ON BOARD TO BE ABLE TO GET UNDERWAY IF REQUIRED, OPERATE NECESSARY EQUIPMENT AND HANDLE POTENTIAL EMERGENCIES. THIS APPLIES TO U.S. NPW AS WELL.

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G. QUESTION. WOULD THE UNITED STATES AUTHORITIES AGREE TO MEET ANY OR ALL OF THE FOLLOWING REQUIREMENTS IN TOTO, OR IN MODIFIED FORM:

(1) THE COMMANDING OFFICER WILL SHUT DOWN THE NUCLEAR PROPULSION PLANT TO A STATE WHERE THE PRIMARY COOLANT TEMPERATURE IS BELOW 93 DEGREES C (200 DEGREES F) AND THE PRESSURE 3500 KP (500 PSI) (SEE FOOTNOTE), AS SOON AS

POSSIBLE AFTER BERTHING, REPORTING TO THE NAVAL AUTHORITIES WHEN THIS STATE, OR LOWER, HAD BEEN REACHED.

(2) THE VESSEL'S REACTOR STATE WILL NOT BE CHANGED WITHOUT THE PERMISSION OF THE APPROPRIATE NAVAL AUTHORITY.

(3) THE VESSEL'S REACTOR WILL NOT BE BROUGHT TO THE FULLY OPERATIONAL CONDITION EARLIER THAN 3 1/2 HOURS BEFORE LEAVING HARBOUR.

ANSWER. THE U.S. CANNOT AGREE TO ANY CONDITIONS WHICH AFFECT THE OPERATING PRACTICES FOLLOWED ON BOARD ITS WARSHIPS. SUCH MATTERS ARE THE SOLE RESPONSIBILITY OF THE OPERATING COUNTRY FOR ANY WARSHIPS.

H. QUESTION. DO UNITED STATES NUCLEAR POWERED WAR VESSELS HAVE A NON-NUCLEAR AUXILIARY PROPULSION SYSTEM CAPABLE OF MOVING THE VESSEL AN ADEQUATE DISTANCE UNDER ITS OWN POWER IN THE EVENT OF AN ACTUAL/POTENTIAL NUCLEAR INCIDENT OR ACCIDENT?

ANSWER. THE ANSWER TO THIS QUESTION INVOLVES ACCESS TO U.S. NAVAL NUCLEAR PROPULSION INFORMATION WHICH CANNOT BE RELEASED. NPW, LIKE OTHER WARSHIPS, ARE DESIGNED WITH REDUNDANCY IN VIRTUALLY ALL MAJOR SYSTEMS. IN ADDITION, A SHIP CAN ALWAYS BE TOWED IF ITS PROPULSION SYSTEMS ARE OTHER WISE DISABLED.

I. QUESTION. IS THE VESSEL ABLE TO SUSTAIN ITS MAIN ELECTRICAL SUPPLIES WITHOUT SHORE POWER BEING AVAILABLE, AND WITH THE REACTOR SHUT DOWN TO THE STATE AT (G) (1) ABOVE?  
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ANSWER. SAME AS H ABOVE.

J. QUESTION. IF THE UNITED STATES AUTHORITIES ARE NOT PREPARED TO SHUT DOWN REACTORS TO THE STATE DEFINED IN SECTION (G)(1) ABOVE, ARE THEY PREPARED TO MEET A MAXIMUM LIMIT ON REACTOR IODINE-131 INVENTORY AT THE TIME ENTRY ?

ANSWER. THE UNITED STATES CANNOT ACCEPT CONDITIONS ON THE OPERATING STATE OF THE PROPULSION PLANTS OF ITS NPW. HOWEVER, SINCE THE PRIMARY PURPOSE OF A REACTOR ON A WARSHIP IS TO PRODUCE PROPULSION POWER, WHEN IN PORT THE POWER DEMAND IS MANY TIMES LESS THAN FOR FULL UNDERWAY PROPULSION.

K. QUESTION. ARE THE UNITED STATES AUTHORITIES IN A POSITION TO CONFIRM THAT USS TRUXTUN HAS SAFETY FEATURES SUCH AS FISSION PRODUCT CLEAN-UP PLANT TO COPE WITH CONTAINMENT LEAKAGE, COMPLETELY INDEPENDENT EMERGENCY CORE COOLING SYSTEMS AND A NO-BREAK REACTOR EMERGENCY POWER SYSTEM?

ANSWER. THE ANSWER TO THIS QUESTION INVOLVES U.S. NAVAL NUCLEAR PROPULSION INFORMATION WHICH CANNOT BE RELEASED.

L. QUESTION. TO ASSIST PREPARATION OF CONTINGENCY PLANS WOULD THE UNITED STATES AUTHORITIES PROVIDE A LIST OF POSSIBLE CONSEQUENCES (IN QUALIFIED TERMS) OF VARIETY OF ACCIDENTS, INCLUDING THE WORST CASE ACCIDENT, THE LEAST IMPROBABLE ACCIDENT, AND THOSE WHICH COULD RESULT FROM COLLISION OR GROUNDING.

ANSWER. THE QUESTION CAN ONLY BE ANSWERED BY USING NAVAL NUCLEAR PROPULSION INFORMATION WHICH CANNOT BE RELEASED.

M. QUESTION. ARE THE UNITED STATES AUTHORITIES IN A POSITION TO PROVIDE ANY OTHER INFORMATION THAT WOULD ASSIST THE NEW ZEALAND AUTHORITIES TO DETERMINE BETTER THE ACTION REQUIRED IN THE EVENT OF AN ACCIDENT AND TO ENABLE CONFIDENTIAL

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A BETTER BASED ASSESSMENT OF SAFETY FACTORS TO BE MADE?  
(FOOTNOTE - IN THE CASE OF A PRESSURIZED WATER-COOLED REACTOR, OR AN EQUIVALENT STATE IN THE CASE OF OTHER TYPES OF REACTOR.)

ANSWER. ALL U.S. NPW USE PRESSURIZED WATER REACTORS. IN THIS CONNECTION AN APPROACH REGARDING CONTINGENCY PLANS WHICH MAY BE FOLLOWED BY OTHER COUNTRIES WITHOUT INVOLVING RELEASE OF U.S. TECHNICAL INFORMATION IS TO USE A TYPICAL PLAN ESTABLISHED FOR COMMERCIAL LAND-BASED CENTRAL STATION PRESSURIZED WATER REACTORS. USE OF SUCH A PLAN IS TECHNICALLY CONSISTENT OWING TO THE SIMILARITY OF THE REACTOR TYPE AND CONSERVATIVE FOR THE FOLLOWING REASONS:

(1) THE REACTORS USED IN NUCLEAR POWERED SHIPS ARE LOWER IN POWER LEVEL THAN THAT OF TYPICAL NUCLEAR LAND-BASED POWER STATIONS. THE LOWER POWER LEVEL REDUCES THE EFFECTS OF ANY POTENTIAL ACCIDENT.

(2) NUCLEAR LAND-BASED POWER STATIONS ARE ASSUMED TO BE OPERATING AT 100 PERCENT POWER FOR EXTENDED PERIODS OF TIME JUST PRIOR TO THE ASSUMED ACCIDENT. SINCE THE REACTOR OF AN NPW IS USED TO PROPEL THE SHIP, THE REACTOR

POWER HISTORY IS OBVIOUSLY FAR LESS THAN 100 PERCENT WHEN THE SHIP IS IN PORT.

(3) IN CONJUNCTION WITH SUBPARA (1) AND (2) ABOVE THE AVERAGE POWER LEVEL IN A NAVAL NUCLEAR PROPULSION PLANT IS ABOUT 100 TIMES LESS THAN THAT OF A TYPICAL COMMERCIAL LAND-BASED STATION.

(4) IF AN ACCIDENT OCCURS TO A LAND-BASED NUCLEAR POWER STATION THERE IS NOTHING THAT CAN BE DONE TO REMOVE THE REACTOR. A SHIP, HOWEVER, CAN BE MOVED OUT OF THE HARBOUR THEREBY ELIMINATING THE SOURCE OF THE PROBLEM.

9. REQUEST EARLY ADVICE AS TO OUTCOME OF CHARGES MEETING WITH PRIME MINISTER OR FOREIGN MINISTER AND EMBASSY ORAL PRESENTATION TO MFA.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** INSTRUCTIONS, POLICIES, NAVAL SHIPS, NUCLEAR WEAPONS, MILITARY VISITS  
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**Subject:** POWERED WARSHIPS (NPW) VISITS TO NEW  
**TAGS:** MNUC, MARR, MMOL, NZ, US  
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